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11
12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 RONALD T. HALL, an adult individual,
15
16 Plaintiff,

17 vs.

18 BRIAN THEUT, individually and JANE
19 DOE THEUT, husband and wife; THEUT,
20 THEUT & THEUT, P.C., an Arizona
21 professional corporation; SOUTHWEST
22 FIDUCIARY, INC., an Arizona
23 corporation; GREGORY DOVICO,
24 individually and PEGGY DOVICO,
25 husband and wife; PHILLIP DOVICO and
26 JANE DOE DOVICO, husband and wife;
BLACK SURETIES – INSURER
ENTITIES I-III,
Defendants.

Case No. CV2010-012820

**FIRST AMENDED
VERIFIED COMPLAINT**

- (I) Intentional Spoliation
- (II) RICO
- (III) Private Party Civil Rights Violations, 42 U.S.C. § 1983
- (IV) Violations of Federal/State Constitutional Due Process Guarantees and Equal Protection
- (V) Rule 60 Independent Action/Savings Clause and Ariz. R.Civ.P. 60(c)(4)/ Fed.R.Civ.P. 60(b)(4)
- (VI) Breach of Fiduciary Duty

JURY TRIAL DEMANDED

21 Plaintiff Hall for his First Amended Complaint (“FAC”) against Defendants, and
22 each of them, states as follows:
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JURISDICTION AND VENUE

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2 1. This Court has original, concurrent, and personal jurisdiction over each
3 Defendant, all residing and/or doing business within Maricopa County, Arizona, causing
4 events to occur in Maricopa County out of which the Hall FAC arises.

5 2. This Court has original and concurrent jurisdiction under Arizona and
6 Federal Constitution Law and Statute; and jurisdiction under the Due Process Clause and
7 Equal Protection Clause for both, including concurrent jurisdiction under the Federal
8 RICO Statutes as pled, together with concurrent and original jurisdiction to hear
9 Plaintiff's Private Party Civil Rights Count under 42 U.S.C. § 1983.
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11 3. This Court has original and/or concurrent jurisdiction to hear Hall's Rule
12 60 Independent Action/Savings Clause for Fraud on the Court by Officers of the Court
13 and pursuant to Ariz.R.Civ.R. 60(c)(4)/Fed.R.Civ.P. 60(b)(4) together with original and
14 concurrent jurisdiction to hear Hall's State Law Breach of Fiduciary Duty claims
15 pursuant to Statute, Regulation, Rule, and the Arizona Code of Professional Conduct.
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17 4. This Court also retains original and concurrent jurisdiction to hear
18 Plaintiff's Intentional Spoliation claims arising out of actionable conduct as more
19 thoroughly described below.

20 5. This Court retains original and concurrent jurisdiction to hear, consider,
21 and incorporate by this specific reference, First Amended Complaints recently filed, or to
22 be filed in proximity herewith, in the *Ravenscroft*, *Long/Raynak*, and the *Mallet* cases
23 which reflect a core associated-in-fact Enterprise engaging in "predicate acts" as defined
24 "racketeering activity" unlawfully acquiring Mr. Hall's private property in derogation of
25 the RICO Statutes while Defendants acted in the capacity of private parties acting under
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1 a color of state law inducing court orders and affirmative State Action depriving
2 Plaintiff, in an unconstitutional deprivation of private property rights without pre- or
3 post-deprivation rights to notice and an opportunity to be heard, an opportunity to be
4 heard at a meaningful time, in a meaningful manner, in violation of State and Federal
5 Statute by the RICO Defendants, by intent and design to deprive Plaintiff of his
6 Constitutional Due Process Guarantees and Equal Protection in violation of said
7 constitutional provisions in violation of Private Party Civil Rights liability pursuant to
8 42 U.S.C. § 1983.
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10 6. This Court is also entitled to hear, enjoin, and issue Order(s) to Show
11 Cause why Defendant Theut, as Mr. Hall's directly employed counsel, has not returned
12 Mr. Hall's client files upon repeated request. Mr. Hall's directly employed counsel,
13 Defendant Theut, refuses, and continues to refuse, Mr. Hall's absolute right to the entire
14 client file including, but not limited, to all communications, transmissions, email,
15 electronic or hard copy transmissions to or from any third party, as well as Mr. Theut's
16 work product, notes, administrative billings, correspondence in electronic fashion or
17 otherwise with state, municipal, county personnel, agencies, including communications
18 to or from any judicial officer or other Officer of the Court (whether Court staff,
19 secretarial, paralegal, investigative, medical personnel, banking, investment, or other
20 Federal or State depositories or holders of Hall property, funds, retirement funds,
21 annuities, or assets in any fashion being held by said institutions in communication with
22 Theut, his law firm Theut, Theut & Theut, Southwest Fiduciary, Inc. ("SFI"), Gregory
23 and Peggy Dovico, Philip and Jane Doe Dovico or others associated with Defendants, or
24 each of them, as well as any notices to insurers and bonding agencies responsible for the
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1 damages suffered by Mr. Hall as well as any reservation of rights or other documents
2 which may lead to impairment of recovery under the bonding, D&O Coverage, Errors
3 and Omissions Coverage, Malpractice Insurance, pursuant to regulation and statute.

4 7. Appended as **Exhibit 1** is Mr. Hall's Omnibus Public Records Request
5 pursuant to A.R.S. §§ 39-121 through 39-121.03, *et al.*, A.R.S. § 41-1350; A.R.S. § 39-
6 121.01(B)(C)(D)(1); A.R.S. § 41-1347(A)(B); Ariz. Sup. Ct. R. 96(a)(5)(b)(1)(d)(e); and
7 Ariz. Sup. Ct. R. 123. Defendants, and each of them, refuse to answer or respond, other
8 than to suggest that given the Court "discovery freeze" that consideration of the Public
9 Records Requests has been intentionally abandoned by Defendants through instructions
10 to their clients to fail to respond, and/or through instruction to the agencies, County, State
11 or Municipal employees to refrain from responding in violation of law, statute, and
12 regulation and under Arizona Supreme Court Rule.

14 8. Venue may or may not be proper in Maricopa County depending in large
15 measure upon whether Mr. Hall is able to receive a fair, unbiased, and impartial hearing
16 on the merits by a judge which, upon consideration, and after full disclosure of issues
17 which a reasonable person would expect to impair or reflect upon the "appearance of
18 impropriety" of the Court in relation to the associations, contacts, connections, and
19 appointment of certain jurists by the Maricopa County Presiding Judge to hear these
20 matters, involving Maricopa County jurists, commissioners, Maricopa County court
21 personnel, and Maricopa County, State and/or Municipal employees and/or agencies
22 referenced throughout the *Hall, Long, Ravenscroft* and *Mallet* First Amended
23 Complaints, specifically incorporated herein by this reference.
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PARTIES

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2 9. Mr. Hall is an adult resident of the State of Arizona within the County of
3 Maricopa.

4 10. Mr. Hall was purportedly the “protected person” in underlying Probate
5 Cause: PB 2006-070267 incorporated herein by this reference, with judicial notice
6 requested of the underlying record pursuant to A.R.E. 201 and/or F.R.E. 201. Mr. Hall
7 directly employed RICO Defendant Theut and Mr. Theut’s law firm, Theut, Theut &
8 Theut.

9
10 11. Defendant Southwest Fiduciary, Inc. (“SFI”) is an Arizona corporation and
11 successor-in-interest to fiduciary agencies acting in league with Nancy Elliston
12 imprisoned for her conduct for and on behalf of SFI’s predecessor-in-interest. (*See*
13 *Ravenscroft* exhibits “Checks & Imbalances”/“Nancy Drew” provided in full text as
14 exhibits to the Incorporated *Ravenscroft* FAC.)

15 12. At all times relevant, Defendants Dovico were directors and/or officers of
16 SFI and resident(s) of Arizona. The DoVico’s were employed by SFI and/or its wholly
17 owned subsidiaries and the Defendants acted for and on behalf of their respective marital
18 communities. The fictitiously named Defendants true names and identities will be
19 supplemented when known.
20

21 13. Defendants’ Theut, are licensed attorneys in the State of Arizona and they
22 are residents of Maricopa County, Arizona. Defendant Theut is also a licensed attorney
23 within the State of Arizona whose wife has been fictitiously named and whose true
24 identify will be supplemented when known, however, the Theuts, and each of them, have
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1 acted on behalf of their marital communities individually, as lawyers and in partnership
2 with one another.

3 14. The fictitiously named Black Sureties or other fictitiously named entities in
4 the caption of the FAC are entities required to indemnify and pay Mr. Hall's damages, in
5 full, trebled together with punitive damages as framed below. The Black Sureties and/or
6 insurers must also pay Mr. Hall's attorneys' fees, costs, and expenses, together with any
7 and all damages assessed by the Court and/or jury herein. Once the identities of these
8 Defendants are discovered, this First Amended Complaint shall be amended accordingly.

9
10 15. The Defendants are by definition inter-related, co-dependent, inter-
11 dependent, and are jointly and severally liable.

12 **ARGUMENT SUMMARIES**

13 16. This case, together with the *Ravenscroft, Long and Mallet* First Amended
14 Complaints highlight criminal financial exploitation of those unfortunate enough to
15 become entrapped as a "protected person" in our Probate System. Those charged under
16 the attorney-client privilege act in conflicted and adverse representation in conspiracy
17 with, ratified by Defendant participants as an associated-in-fact Enterprise. Fiduciary
18 duties are breached in every conceivable fashion with the interests of the "protected
19 person" subordinate to the financial and pecuniary interests of the "appointed" fiduciaries
20 who, under normal methods of business associated with the Enterprise, are routinely
21 appointed by one another, without disclosure of the contacts, connections, and significant
22 routine inter-dependence of the "appointed" lawyers and fiduciaries gaming the system
23 in violation of Statute, Rule, Regulation and Code. The Syndicate acts in routine form,
24 as an ordinary course of doing business, by threatening, intimidating, and extorting
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1 compliance with those under their charge, as with Mr. Hall. For example, in the Hall
2 case, Mr. Hall moved, without legal assistance, to shed the shackles of the Probate Court
3 through expungement of the guardianship proceedings himself, his “appointed lawyer”
4 actively engaging in absolutely no “representation” as required under the statutes. Of
5 course, Mr. Hall “won” a hollow victory by prevailing but not before Dovico attempted
6 to extort compliance from Mr. Hall requiring withdrawal of the motion to terminate the
7 probate proceedings by threatening to sell Mr. Hall’s prized gun collection accumulated
8 over the course of 40 years. When Mr. Hall refused, the assets were liquidated
9 immediately for approximately 10 to 15 cents on the dollar in payment for “fees” for the
10 fiduciaries and the “appointed” lawyers.
11

12 17. As further proof of Mr. Hall’s “mental competency” he was humiliatingly
13 cross-examined by his own lawyers charged with representing his “best interests” as Mr.
14 Hall attempted to prevent the further hemorrhaging of his estate, which by this point had
15 been reduced to zero. With his prized gun collection gone and his retirement benefits in
16 cash assigned to the fiduciaries and lawyers, Mr. Hall, after being unceremoniously
17 mugged by the system, was at least free to pursue this cause of action. Mr. Hall is, and
18 was, competent during the majority of the “Probate Court” hijacking. *Cf. U.S. v.*
19 *Armstrong*, 2009 U.S. Dist. LEXIS 81229 (W.D. Pa. September 8, 2009); *See e.g.,*
20 *Wyatt’s Case*, 982 A.2d 396, 159 N.H. 285 (2009) (conflicted dual representation of
21 conservator and ward; temporary conservatorship is not a determination of mental
22 competence nor is appointment of a temporary guardian an adjudication of incapacity;
23 judgment in a contested action (as in the appointment process and in “accounting” after-
24 the-fact approvals) may be avoided by a person adjudicated temporarily “incompetent”
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1 through inadequate representation by counsel in the proceedings given that the ward is
2 absolutely entitled to counsel who will undertake vigorous representation of his or her
3 legal interests. *Compare, In Re the Leslie Fay Companies, Inc.*, 175 B.R. 525 (Bankr.
4 S.D.N.Y. 1994) (comparisons to bankruptcy disclosure requirements, intentionally
5 avoided in the present case despite requirement by Statute and Rule).

6 **ALLEGATIONS COMMON TO ALL COUNTS**

7 18. This Complaint, including all prior and subsequent paragraphs, are to be
8 read in their entirety as a unified whole.

9 19. On August 3, 2005, Mr. Hall was exposed to poisonous gas at his work
10 ultimately leading to a temporary breakdown that motivated his friend and sister to have
11 him committed to a Maricopa County psychiatric ward (“Maricopa County”) for a 21-
12 day evaluation on March 27, 2006.

13 20. During his commitment at Maricopa County, his long-time friend and
14 neighbor, Diana Roberts (“Roberts”), whom he had known since she was a little girl,
15 fraudulently induced Mr. Hall to execute a Power of Attorney in her favor. During Mr.
16 Hall’s civil commitment, Roberts used the Power of Attorney to steal \$15,000.00 from
17 Mr. Hall’s credit union account, a \$3,000.00 quarter horse, and \$500.00 saddle.
18 Roberts also took delivery of a pickup truck that Mr. Hall had leased, damaging the
19 vehicle and putting 7,500 miles on the vehicle, without authorization from Mr. Hall.
20

21 21. After his release from Maricopa County, Mr. Hall was treated by Value
22 Options for approximately one year.
23

24 22. Shortly after his civil commitment, on April 5, 2006, Mr. Hall’s son, Jesse
25 Hall, was appointed as Temporary Guardian and Conservator on behalf of his father.
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1 As guardian and conservator, Jesse Hall was represented by Attorney Patti J. Shelton
2 (“Shelton”) of Cooley & Robbins, LLC.

3 23. Mr. Hall’s treatment at Value Options showed tremendous progress.
4 Within a short time, his driving privileges were reinstated and he was soon able to take
5 care of himself and his finances.

6 24. On June 19, 2006, Brian Theut substituted in as court-appointed counsel
7 for Mr. Hall in the continuing probate proceedings. From the beginning of his appoint-
8 ment, Mr. Theut’s interests conflicted with Mr. Hall’s interests.

9 25. On September 19, 2006, Jesse Hall, through his attorney, Shelton,
10 requested that Mr. Hall’s physician determine whether Mr. Hall was now able to make
11 his own decisions and handle his own affairs, allowing termination of his temporary
12 guardianship and conservatorship. Mr. Hall’s physician concluded that Mr. Hall could
13 care for himself and manage his own financial affairs.
14

15 26. On November 21, 2006, Jessie Hall petitioned to terminate the temporary
16 guardianship and conservatorship of his father.
17

18 27. One month later, without consulting Mr. Hall (his client), Theut filed an
19 Emergency Petition for Appointment of Successor Conservator of an Adult
20 (“Emergency Petition”) in contravention of the petition to terminate. In his Emergency
21 Petition, Theut stated that Ron Hall was under financial stress due to the fact that he
22 entered into an unfavorable mortgage option and needed assistance to solve the
23 problem. Theut requested that the Court appoint SFI as permanent successor
24 conservator. The hearing for the Emergency Petition was scheduled for the same day as
25 the petition to terminate the temporary guardianship and conservatorship.
26

1 28. Mr. Hall is a veteran of the Vietnam War. As a veteran, he was entitled to
2 conservatorship services available to all veterans through the Veterans Administration
3 without incurring the substantial (and unreasonable) costs of a private fiduciary, such as
4 SFI.¹ Theut never advised Mr. Hall regarding this low-cost option of utilizing Veteran
5 Administration resources. Instead, Theut recommended an option that would cost Mr.
6 Hall tens of thousands of dollars more than the low-cost option of using a
7 conservatorship through the Department of Veterans Affairs, leading to his client's
8 functional insolvency.

9 29. Mr. Hall received the Emergency Petition by mail several days before the
10 hearing. To say the least, Mr. Hall was surprised. Theut never consulted with Mr. Hall
11 prior to preparing and filing the Emergency Petition, nor discussed with Mr. Hall or Mr.
12 Hall's son the need for a permanent conservatorship. The Notice, Application, and
13 Affidavits of Theut were constitutionally and legally flawed in any event.

14 30. Before the hearing on the Emergency Petition, Theut demanded that Mr.
15 Hall agree to the appointment of SFI as permanent conservator.
16

17 31. On January 3, 2007, Theut's Emergency Petition was heard by the
18 Honorable Casey Newcomb. The temporary guardianship and conservatorship was
19 terminated but a permanent conservatorship took its place and SFI was appointed
20 without Due Process.
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24 _____
25 ¹ A.R.S. § 14-5414(F) provides "compensation payable to the Department of Veterans'
26 Affairs, when acting as a conservator of the estate of a veteran ... shall not be more
than five percent of the amount of monies received during the period covered by the
conservatorship."

1 32. At the hearing, SFI's attorney Paul Harter took the stand and testified
2 about all the things that SFI would do on behalf of Mr. Hall, including, but not limited
3 to: pursuing his claims against Roberts, pursuing claims against Mr. Hall's former
4 employer (Honeywell), and saving Mr. Hall's house. This testimony influenced Mr.
5 Hall to agree to the appointment of SFI as permanent conservator. They were all lies,
6 effective perjury, by an Officer of the Court.

7 33. Believing that SFI intended to pursue his interests, Mr. Hall was
8 fraudulently induced to consent to SFI's appointment as a result of the promises SFI
9 never performed.

10 34. Almost immediately, SFI's true intentions were exposed. SFI's first act
11 was to force Mr. Hall to purchase a \$7,500.00 burial plan that he did not want. SFI then
12 began siphoning money out of Mr. Hall's bank account. By May of 2007, Mr. Hall's
13 bank account had been reduced from \$56,000.00 to \$23,000.00.

14 35. Alarmed at the rate his money was being depleted and the fact that his
15 multiple requests to SFI for an accounting were being ignored, Mr. Hall informed Theut
16 in May 2007 about SFI's malfeasance, including: its failures to assist Mr. Hall in a
17 lawsuit filed by Chrysler Corporation and its failure to protect Mr. Hall's legal rights in
18 other matters. Mr. Hall wrote to Theut: "If there must be a conservator I would like it
19 to be the Veterans Administration." He also wrote, "I am hoping you can represent me
20 in this issue. If not please request money from SFI Fiduciary so I can hire a private
21 attorney."

22 36. Theut ignored the request(s) and did not provide any representation to Mr.
23 Hall.
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1 37. Theut never advised Mr. Hall that he could petition to have his
2 conservatorship terminated.

3 38. SFI also failed to pursue and/or preserve viable claims that Mr. Hall had
4 against Roberts for theft of \$15,000.00 and Honeywell. Pursuant to A.R.S. § 46-456, as
5 a vulnerable adult, Mr. Hall had claims equaling two times the amount of actual
6 damages, or at least \$30,000.00.

7 39. SFI also failed to report the exploitation and theft to protective services or
8 to the police authority in accordance with A.R.S. §46-454 (B).

9 40. SFI failed to exercise extreme care and diligence in making other
10 decisions on behalf of Mr. Hall. For instance, it ignored Mr. Hall's requests for dental
11 treatment.

12 41. SFI failed to make decisions in accordance with the determined
13 preferences of Mr. Hall, failed to manage and protect the personal and monetary
14 interests of Mr. Hall, and engaged in self-dealing.

15 42. SFI and Theut had a duty and absolute obligation to ensure that Mr. Hall
16 received the most cost-effective conservatorship, including using the Veterans
17 Administration services as conservator for Mr. Hall. SFI refused.

18 43. SFI further depleted Mr. Hall's assets by purchasing life insurance and a
19 burial plot, even though Mr. Hall did not need a burial plot.

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22 **Ron Hall Fights Back**

23 44. Seeing his resources being rapidly depleted by SFI and Theut, Mr. Hall
24 took matters into his own hands and researched the Arizona Probate Code. He learned
25 that he had a right to petition the court to terminate his conservatorship without the aid
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1 of his attorney. Receiving no help from Theut, and unable to retain other counsel, Mr.
2 Hall petitioned for release of his conservatorship on March 11, 2008. SFI filed a
3 response on April 2, 2008, and a hearing was set for April 8, 2008.

4 45. Approximately one week before the hearing, Mr. Hall received a phone
5 call from Phillip Dovico threatening to sell Mr. Hall's prized gun collection (assembled
6 over a 40-year period) if the Petition was not "dropped."

7 46. At the April 8, 2008 hearing, still purporting to act as Mr. Hall's attorney,
8 Theut took a posture that directly conflicted with Mr. Hall's objective of terminating
9 the expensive, wasteful, and fraudulent conservatorship. At the hearing, Theut demon-
10 strated his hostility by ordering Mr. Hall's family members not to speak in court. Theut
11 also treated Mr. Hall as a hostile witness during his examination of Mr. Hall by
12 demanding that Mr. Hall answer his questions with yes or no answers.
13

14 47. Despite Theut's machinations, Mr. Hall succeeded in getting his conser-
15 vatorship terminated on July 11, 2008, but not without first sustaining significant and
16 needless damage to what little resources he had.
17

18 48. Before SFI was removed, its final *coup de grace* was to sell Mr. Hall's
19 prized gun collection. To add insult to injury, SFI sold the guns at a fraction of the fair
20 market value in an auction without reserve, also violating statute requiring
21 commercially reasonable disposition in a commercially reasonable manner, even if the
22 acts were extortionate (they were).

23 49. The fiduciaries and Defendant attorneys failed to provide documents or an
24 evidentiary record in violation of the enumerated governing statutes. The attorneys
25 and fiduciaries provided no advocacy or "litigation" in any sense. In addition to the
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1 enumerated statutory breaches littered throughout the FAC, the fiduciaries and
2 attorneys merely liquidated assets, cash, distributions and Mr. Hall's assets to
3 themselves. The scheme or artifice to defraud included "advance" payment of fees,
4 expenses and costs irrespective of propriety and irrespective of any oversight or judicial
5 review. The payments are *per se* unlawful and fraudulent transfers with respect to Mr.
6 Hall and must be held under a constructive trust. There is no statutory allowance for
7 the fiduciaries and attorneys to self-regulate their own payments from Mr. Hall and his
8 assets prior to some form of judicial review, and *prior* to payment authorization by SFI,
9 even were that legitimate, which, of course, it is not.

11 50. Over the course of his "representation" of Mr. Hall, Theut continued to
12 bill Mr. Hall but failed to provide any service of value because his services had no
13 value. Each "billing" is a "predicate act."

14 51. During its conservatorship, SFI took every opportunity to "milk" Mr.
15 Hall's estate, despite its oath that it would "perform, according to law, the duties of
16 such fiduciary."

17 52. Defendants have charged exorbitant, duplicative and unreasonable fees
18 for their services, and have advocated positions and engaged in actions designed to
19 benefit themselves, not Mr. Hall.

21 53. When Theut filed the Emergency Petition, it failed to comply with several
22 rules and statutes. For instance, the Emergency Petition failed to comply with A.R.S. §
23 14-5401.01 because it did not properly set forth the emergency that necessitated the
24 appointment. The Emergency Petition merely cites there is an emergency but fails to
25 establish any facts demonstrating immediate action is necessary.
26

1 54. Mr. Hall was deprived of important and necessary procedural protections
2 designed to protect vulnerable adults. These deprivations concealed potential conflicts
3 and connections between Theut and SFI. This concealment furthered and facilitated the
4 ability of the Enterprise to accomplish its goal of billing for services that were neither
5 desired nor needed by Mr. Hall.

6 55. Moreover, Theut did not advise Mr. Hall of his rights flowing from the
7 hearing regarding appointment of guardian and conservator. Theut did not advise Mr.
8 Hall of his right to petition for termination of the conservatorship.

9
10 **Mr. Hall's Procedural and Substantive Due Process Rights.**²

11 56. The December 22, 2006 hearing was deficient in several respects.

12 57. Required interview(s) and psychological evaluation(s) were not done or
13 filed for the December 22, 2006 hearing. A.R.S. § 14-5407 requires that an investigator
14 interview Mr. Hall and an appropriate medical or psychological evaluation be
15 conducted. (*See also*, Title 36, *infra*.)

16 58. These failures are particularly egregious in light of the Social Security
17 Administration finding that Mr. Hall was “able to think, communicate, and care for his
18 own needs” a month later.
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22 ² The Due Process Clause guarantees more than fair process, and the “liberty” it
23 protects includes more than the absence of physical restraint. *Collins v. Harker*
24 *Heights*, 503 U.S. 115, 125 (1992) (Due Process Clause “protects individual liberty
25 against ‘certain government actions regardless of the fairness of the procedures used to
26 implement them’”) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). The
Clause also provides heightened protection against government interference with
certain fundamental rights and liberty interests. *Reno v. Flores*, 507 U.S. 292, 301-302
(1993); *Casey*, 505 U.S. at 851.

1 59. The Probate Court allowed Theut and SFI to commit material violations
2 of the Probate Code and Arizona Statutes, as set forth herein, causing direct harm to
3 Plaintiff by allowing Defendants to defraud Plaintiff under the color of state law by
4 state actors through private parties as Officers of the Court.

5 60. Instead, the Court, in complete derogation of its obligations to Mr. Hall,
6 continued the conservatorship for more than one year prompted by Defendants.

7 61. Mr. Hall suffered damages as a direct result of Defendant's intentional
8 conduct.

9 62. The Court's failure to enforce its own rules and complete disregard for
10 Mr. Hall's substantive and procedural due process rights created a zone of danger
11 subjecting vulnerable adults like Mr. Hall to the predatory practices of his court-
12 appointed attorneys, and conservator.³

13 63. SFI accepted appointment as conservator on January 11, 2007, and agreed
14 to perform the fiduciary duties associated with such appointment.
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19 ³ United States courts have recognized a constitutional right to be free from "state-
20 created danger," which occurs when "state authority is affirmatively employed in a
21 manner that injures a citizen or renders him 'more vulnerable to injury from another
22 source than he or she would have been in absence of state intervention.'" *Bright v.*
23 *Westmoreland County*, 443 F.3d 276, 281 (3d Cir. 2006) (quoting *Schieber v. City of*
24 *Philadelphia*, 320 F.3d 409, 416 (3d Cir. 2003)). A state-created danger claim has four
25 elements: (1) 'the harm ultimately caused was foreseeable and fairly direct'; (2) a state
26 actor acted with a degree of culpability that shocks the conscience; (3) a relationship
between the state and the plaintiff was such that the 'the plaintiff was a foreseeable
victim of the defendant's acts,' or a 'member of a discrete class of persons subjected to
the potential harm brought about by the state's actions,' as opposed to a member of the
public in general; and (4) a state actor affirmatively used his or her authority in a way
that created a danger to the citizen or that rendered the citizen more vulnerable to
danger than had the state not acted at all. *Id.*

1 64. Before appointment, SFI failed to file a disclosure affidavit with the Court
2 as required to be filed by any conservator seeking appointment before such appointment
3 can be approved by the Court. A.R.S. § 14-5106 and Ariz.R.Prob.P. 20. Such
4 disclosure requires the conservator appointee to provide to the court, under oath;
5 whether the appointee has acted as a guardian or conservator for another person within
6 three years of the petition; how many individuals the appointee is serving and how
7 many terminated appointments the appointee has had in the last three years and with
8 who [lawyers]; whether appointee has knowledge of the powers and duties of a
9 conservator; whether appointee has acted in a fiduciary capacity pursuant to a power of
10 attorney; whether the appointee has failed to file any accounting post-delinquency
11 notice; whether the appointee has ever been removed as a conservator and under what
12 circumstances; the nature of the relationship between Mr. Hall and the appointee (and
13 counsel), and how Mr. Hall met Defendant; whether the appointee, or an enterprise, has
14 an interest in, ever received anything of value, greater than \$100.00, by gift, devise, or
15 bequest from an individual or its estate (or counsel) to whom the appointee was not
16 related and for whom the proposed appointee served as a guardian, conservator, trustee
17 or agent; and whether the appointee has an interest in any enterprise providing housing,
18 health care or other services to any individual.
19

21 65. SFI violated Ariz.R.Prob.P. 33 by disbursing money from Plaintiff's
22 estate prior to receiving court approval for such distributions.

23 66. SFI breached fiduciary duties owed to Hall by failing to provide services
24 of value, by violating all Due Process Guarantees, statute, law, and regulation enacted
25 for Mr. Hall's "protection," not his financial exploitation.
26

1 67. Rather than fulfilling their duty to help Mr. Hall become self-sufficient
2 and independent as quickly as possible, Defendants took other steps (or failed to take
3 actions that they should have taken) to extend their tenure as conservators and maintain
4 control over Mr. Hall's assets and drain his estate, which is the normal course of
5 business as conducted by the Enterprise in this, and all cases incorporated by reference.

6 68. SFI failed to explore or pursue claims that Mr. Hall may have against
7 Roberts and Honeywell.

8 69. Defendants instead engaged in self-dealing to the detriment of Mr. Hall.

9 70. Mr. Hall was stripped of tens of thousands of dollars by Defendants.
10 Moreover, this exploitation occurred under the supervision and direction of fiduciaries.
11

12 71. Defendants, and each of them, owed a duty to Mr. Hall to ensure that his
13 estate was maintained and protected from financial exploitation. Instead, Defendants
14 diverted funds, for their own pecuniary gain, and to the detriment of Mr. Hall, as the
15 RICO Defendants liquidated assets and failed to pursue all legal remedies available to
16 protect Mr. Hall.
17

18 72. The combined operations of SFI, through insider directors and officers,
19 the DoVico's, along with Defendant TT&T, Brian Theut and Paul Harter, constituted a
20 distinct Enterprise within the meaning of the racketeering statutes, *infra*. That
21 Enterprise was functionally distinct from the individual Defendants, and existed
22 continuously from at least 2005-2006.

23 73. *See also, Griffin v. McNiff*, 744 F. Supp. 1237, 1244-1251 (S.D.N.Y.
24 1990) (finding that plaintiffs pled with sufficient particularity claims made under RICO
25 against lawyers, accountants and their respective firms); *Maxwell v. Southwest Nat'l*
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1 *Bank*, 593 F. Supp. 250 (D. Kan. 1984) (where lawyers, banks and their officers
2 conspired to induce the decedent to execute a will that left her estate to strangers, the
3 court found that plaintiff successfully pled the RICO claim, and in that case, the court
4 emphasized that “[c]ongress did not want to reduce RICO’s potency by imposing a
5 burden of proof that would be difficult or impossible to meet.”).

6 74. The Enterprise actively, directly and proximately caused damage to Mr.
7 Hall in an amount to be proven at trial, trebled, together with punitive damages (state
8 law counts) in an amount to deter these Defendants, and others, from engaging in
9 exploitative conduct against those they are charged with protecting. Treble damages
10 and punitive damages are not mutually exclusive and are allowed. *Rhue v. Dawson*,
11 173 Ariz. 220, 841 P.2d 215 (Ct. App. 1992) (includes attorney fees and costs as well).

12 **Operative Facts/Controlling Authority**

13
14 75. Mr. Hall reincorporates all prior paragraphs, documents of record, sworn
15 testimony and transcripts, affidavits, the underlying probate files, including the First
16 Amended Complaints in *Long/Raynak*, *Ravenscroft and Mallet* and documents
17 accorded judicial notice under A.R.E. 201.

18 **Client Files Denied**

19
20 76. On June 28, 2010, undersigned counsel of record requested immediate
21 return of the client files (for which all Plaintiffs, and those incorporated by reference,
22 paid for, most to the point of insolvency) to include primarily communications, emails,
23 electronic transmissions to or from, or among, or by and between, any of the
24 Defendants with one another, third-parties, other Officers of the Court, reporters, and
25 judicial staff, State, County, or Municipal agencies or anybody employed thereunder, or
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1 the Judiciary or Commissioners with the electronic transmissions going to or from, or
2 “copied,” or “forwarded” or “blind” copied. Those requests have been denied, in total,
3 by Defendants under the guise of a “discovery freeze.” The Court is aware that return
4 of the client files is a protected property interest having nothing whatsoever to do with
5 “discovery.”

6 77. On June 1, 2010, and incorporated by reference as Exhibit 1 to this FAC,
7 was an Omnibus Public Records Request and Requests under Ariz. Sup. Ct. R. 123
8 pertaining to Mr. Hall, Marie Long, Helga Mallet, and Edward Abbott Ravenscroft III.
9 Opposing counsel and Defendants directly have instructed and/or communicated with
10 each and every respondent served with the Requests. The result of which has been the
11 intentional failure to respond other than in heavily redacted form with unidentifiable
12 withholdings in violation of statute and law by the Office of General Litigation Services
13 and the Public Fiduciary. This Court recognizes that a Public Records Request and
14 Request under Ariz. Sup. Ct. R. 123 are not requests subject to a “discovery freeze” as
15 they are not “discovery” and unrelated to the litigation process even during ongoing
16 litigation. The only objective inference to be derived from this conduct, including the
17 mutilation, spoliation, and elimination of underlying electronically stored files (as
18 discussed thoroughly in the *Ravenscroft* matter) is that if the information were disclosed
19 the evidence would have eviscerated the blizzard of defense filings. The Defendants,
20 and each of them, have knowingly and intentionally violated the law, Codes of
21 Professional Conduct, Ethics, opinions on point, and have acted in a manner
22 inconsistent with their duty of candor, honesty, and forthrightness to the Court and the
23 litigants. Due to Defendants cross-pollination in issuing and receiving emails from
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1 third-parties unrelated to any “attorney-client” relationship, concealment of the emails
2 and other electronic transmissions were expressly waived long ago. Importantly, the
3 Plaintiffs and each of them, directly paid for the work product, files, and all material
4 generated which related, or which may have related, to them whether in attorney-client
5 fashion or under strict fiduciary standards requiring return of the files to the Plaintiff
6 bearing upon a conspiracy and conduct designed expressly to undermine and
7 intentionally breach fiduciary duties owed concurrently to the Plaintiffs as the
8 “protected persons” and as the owner, not merely the beneficiary of, Mr. Hall’s cash
9 and assets (wiped out), Ms. Long’s cash and assets (wiped out), Ms. Mallet’s cash and
10 assets (wiped out) and the invasion and failure to defend against invasion of Mr.
11 Ravenscroft’s assets exceeding \$600,000 in “professional fees” and approximately \$2
12 million in “waived” claims against M&I Bank, because, of course, in Mr. Ravenscroft’s
13 case M&I Bank held Mr. Ravenscroft’s assets which were distributed to Defendants; in
14 that case a *quid pro quo* for fiduciary and attorney “fees” held by M&I Bank in a CD.
15

16
17 **Intentional Statutory Breaches in Underlying Probate**
18 **Proceedings as Evidence of Actionable Conduct**

19 78. Defendants, and each of them, conflate the Counts of (I) Intentional
20 Spoliation; (II) RICO; (III) Private Party Civil Rights Liability Under 42 U.S.C. § 1983;
21 (IV) Violation of Constitutional Due Process Guarantees and Equal Protection; (V)
22 Rule 60 Independent Action/Savings Clause and Rule 60(c)(4) and its Federal Rule
23 counterpart; and (VI) Breach of Fiduciary Duty in these actions which incorporate
24 causes of action wholly independent from, and distinct from, the “probate” proceedings,
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1 which are merely evidence of violative conduct under Counts I-VI, and not litigated
2 under Titles 36 or 14 of the Arizona Revised Statutes.

3 79. Defendants, and each of them, have knowingly and intentionally violated
4 the Code of Professional Conduct, applicable Fiduciary Codes adopted by the Arizona
5 Supreme Court, and have intentionally set aside legislative enactments under Titles 36
6 and 14, and elsewhere, engaging in a RICO conspiracy all “appointed” by the same
7 fiduciaries, lawyers, and “appointees.” The Enterprise, by definition, is incestuous.

8 80. Defendants, and each of them, intentionally breached Public Health and
9 Welfare Statutes obtaining “appointments” under color of law from state officials
10 obtaining Court Orders in violation of statute, rule, and the State and Federal
11 Constitutions.

12 81. Mr. Hall, as with Ms. Long and Mr. Ravenscroft, were all entitled to
13 Veterans Administration benefits to the extent a guardianship or conservatorship were
14 needed for a limited period of time at pennies on the dollar to the extraordinary damage
15 sustained. The Defendants, and each of them, failed to apprise, advise and instruct Mr.
16 Hall, as with Mr. Ravenscroft and Ms. Long, that VA treatment and oversight were
17 available, and in the “best interests” and conservation of Plaintiffs’ assets.

18 82. Defendants, and each of them, pre-approved, unilaterally without notice
19 or a right to be heard by the Plaintiff as his or her private property interests were quietly
20 liquidated without Court approval, or Court oversight, or audit, until the RICO
21 Defendants, and each of them, had sufficiently exhausted the assets of those to whom
22 an attorney-client duty and/or fiduciary duties were owed in violation of Rule and
23 Statute, and in violation of the Due Process Clause and the Equal Protection Clause.
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1 83. State action, in violation of the Federal and State Constitutions, Federal
2 and State statutes, and Local Rules, provided Defendants, and each of them, with the
3 opportunity to obtain an *ex post facto* “rubber stamp” relative to the asset liquidations.
4 There are no statutory or other legislatively enacted provisions, or rules of court which
5 provide for these credit advances as against uncontrolled and unauthorized expenditures
6 rendering these proceedings, constitutionally defective. *In re Maricopa County*, MH-
7 90-00566, 173 Ariz. 177, 840 P.2d 1042 (Ct. App. 1992). Failures to comply with due
8 process considerations in the absence of any pre- or post-deprivation hearings, under
9 color of state law, render the underlying guardianship and conservatorship proceedings
10 void or voidable. *In re M.H.* 2007, 001236, 230 Ariz. 160, 204 P.3d 418 (Ct. App.
11 2008); *In re M.H.* 220 Ariz. 277, 205 P.3d 1124 (Ct. App. 2009). The “fee”
12 liquidations disclosed months and in certain cases such as *Long and Ravenscroft* a year
13 or more after the fact precludes Plaintiffs’ right under the Confrontation Clause denying
14 due process under the Sixth Amendment to the U.S. Constitution. *In re MH* 222 Ariz.
15 287, 213 P.3d 1014 (Ct. App. 2009).
16

17 84. Statutes intentionally breached include, but are not limited to: (1) A.R.S.
18 § 14-5652(B) (fiduciaries and attorneys for the “ward” cannot act in an adverse and
19 conflicted fashion against the “protected person” with such conduct by the fiduciary
20 authorized and ratified by its attorneys, inputted to the attorney or attorneys as a matter
21 of legislative prerogative); (2) A.R.S. § 36-506 (unconditionally prohibits denial of any
22 civil rights of the “ward” or “protected person”); (3) Probate and Mental Health Cases,
23 Local Rules of Maricopa County, Rule 5-5.4 (no reviews ensured “compliance” with
24 the laws of the State of Arizona and Court Rules); (4) 5.6/A.R.S. § 14-5106 (requires
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1 full, complete and candid disclosure involving all contacts, connections, and
2 relationships between and among those seeking “appointment” which, in the instant
3 case if any documents were filed at all, were unqualifiedly deficient, by intent and
4 design); (5) LR 5.7 (required fiduciaries and their lawyers to provide, within 90 days
5 post-appointment, statements reflecting the net value of the “protected persons” assets
6 together with detailed statements for services rendered; estimates of total fees with
7 estimated revisions in quarterly fashion required in the “proposed form of order” which,
8 were non-existent in the present case); (6) A.R.S. § 14-5424(D) (prohibits defendant
9 lawyers and fiduciaries from validly arguing, as they have persistently done, for their
10 own limitations on liability); (7) RICO Defendant Theut and the Theut firm entered into
11 a direct attorney-client relationship with Mr. Hall. Mr. Hall paid for the Theut legal
12 services, advice, expected competency, and duty of undeviating loyalty for and on
13 behalf of Mr. Hall’s paramount interests. Defendant Theut was required to immediately
14 turn over the Hall files, and any documents, work product, communications, email,
15 electronic transmissions, electronic storage, redundant electronic storage, in native
16 format with the metadata and attachments which has been the law under Arizona
17 Supreme Court authority for the last 27 years. *Cf. Nat’l Sales & Service Co. v. Superior*
18 *Court*, 136 Ariz. 544, 667 P.2d 738 (1983) (lawyers duty requires ***not*** prejudicing or
19 damaging client irrespective of a “charging” or “retaining” lien; the attorney shall
20 immediately return client files to avoid impairing client’s ability to prosecute and/or
21 defend him or herself in subsequent proceedings; disbarment required); *See also,*
22 *Fickett v. Superior Court*, 27 Ariz. App. 793, 558 P.2d 988 (Ct. App. 1976) (attorney
23 undertaking representation of guardian of a “protected person” assumes an attorney-
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1 client relationship not only with the guardian, but also with the ward where the attorney
2 knows, or should know, that the guardian is acting adversely to the ward's interest;
3 frustration of the guardianship becomes foreseeable, as does foreseeability of damage to
4 the ward; the ward's interest(s) overshadow those of the guardian in situations where
5 the "protected person" is in fact the owner of the assets; the protection of which the
6 attorneys and fiduciaries are employed, which creates the direct attorney-client
7 relationship and fiduciary duties where the "protected person" is not merely a
8 "beneficiary," but is in fact the title-holder and owner of assets which cannot be
9 divested or impaired by statute); *Snell & Wilmer, LLP v. Fegen (In re Estate of*
10 *Fogelman)*, 197 Ariz. 252, 3 P.3d 1172 (Ct. App. 2000) (a lawyer, (like Theut), may not
11 engage in conflicted representation in which the lawyer's interest(s) are materially
12 limited based upon "responsibilities" to a concurrent client, or a third-person, or driven
13 by the lawyers own self-interest; where representation of multiple clients exists, written
14 and informed consent and consultation shall be required and must include a full and
15 detailed explanation and implication of the risks inherent in the lawyers dual roles,
16 including the advantages and risks involved; the lawyers duty to the "protected person"
17 is direct as the direct owner of the assets purportedly being "protected," and the
18 "protected person" is not by definition, a "beneficiary" of his own estate assets which
19 legally trumps all conflicted concurrent representation).

22 85. For example, A.R.S. § 36-540 was breached, including the absence of any
23 findings by clear and convincing evidence of a documented "mental disorder" which was
24 remedial within a period of weeks under appropriate psychotropic medications properly
25 administered at virtually no cost. A.R.S. § 36-501(26). Mr. Hall, as with all
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1 incorporated cases, was deprived of an evaluation by at least two qualified physicians
2 (A.R.S. § 36-501(12)). The Plaintiffs were **not** “gravely disabled” as defined under
3 A.R.S. § 36-501(16), nor were the Plaintiffs, and each of them as incorporated by
4 reference, including Mr. Hall presently, given the opportunity or explained, *sua sponte*
5 by the Probate Court that Plaintiffs had valuable constitutional rights under A.R.S. § 36-
6 501(20) for appointment of an “independent evaluator” by a physician of their own
7 choosing. Under A.R.S. § 36-501(33) the record for which judicial notice is requested
8 contains absolutely no “clear and convincing evidence” that Mr. Hall was “acutely
9 disabled” at any time, let alone within weeks of his Probate Court entrapment, or at the
10 “Emergency” “Hearings,” or at any other time relevant here..

12 86. In the *Hall, Mallet* and *Ravenscroft* cases incorporated herein by this
13 reference, all were released “under their own recognizance” to manage their own
14 financial affairs, to manage their daily activities without fear of injury to self or others,
15 without clear and convincing evidence of a “mental disease” rendering them
16 “incompetent,” with each and every Plaintiff denied the opportunity to retain counsel, as
17 a constitutional right, of their own choosing in violation of U.S. and State Constitutional
18 guarantees. The fact that the underlying Probate Proceedings required Mr. Hall to
19 illustrate his competency to testify under oath subject to cross-examination in standards
20 equivalent to A.R.S. § 13-4501(1)(2) is, by Judicial Admission, incontestable evidence of
21 “competence.” Mr. Ravenscroft, similarly, had to testify his way out of the guardianship
22 and certain conservatorship appointments while managing his own affairs on a daily
23 basis, living alone in his own house responsible for his daily financial and medical
24 affairs. Mr. Hall and Mr. Ravenscroft are fully competent, lucid, and able to
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1 communicate with undersigned counsel, and to understand the nature and appreciate the
2 magnitude of the proceedings, and apparently by judicial fiat, are fully capable to
3 respond to direct and cross-examination and present lucid, candid and truthful
4 explanations which, in fact and law, were adopted by the underlying Probate Jurists
5 handling the respective cases. On the other hand, Ms. Mallet, now in her late 70s, has
6 had her estate, as explained yesterday at hearing (the Mallet FAC shall be provided
7 shortly awaiting an expedited transcript from Monday (this is Wednesday, July 28,
8 2010), July 26, 2010 involving, as usual, Enterprise Defendants Sun Valley Group and
9 Jerome Elwell and Co., explaining to a Probate Commissioner how to abuse process by
10 issuance of subpoenas under Rule 11 seeking privileged attorney-client information to
11 collaterally attack these proceedings.) Ms. Mallet, like Mr. Hall and Mr. Ravenscroft,
12 has apparent “competence” to the extent that her “fiduciaries” allowed her to move, on
13 her own, half-way across the country to Colorado managing her own daily affairs,
14 managing her own funds (what little there is left as she teeters on the brink of
15 insolvency), while Sun Valley attempts to collaterally attack Ms. Mallet’s “mental
16 competence” despite its admissions by conduct clearly and unequivocally representing
17 their lack of concern, as a fiduciary, that Ms. Mallet is competent, capable, lucid, has a
18 high degree of competence to manage her daily affairs, both financially and medically
19 since there is no money left for SVG to bill against (**Exhibit 2**).

22 87. The sham perpetuation by the fiduciaries, even to the extent Mr. Hall was
23 subject to cross-exam by his own counsel reflects that the probate “incarceration” was
24 illusory, a Fraud on the Court by Officers of the Court, and unreasonably protracted for
25 the simple reason of exhausting Mr. Hall’s assets which of course, render the underlying
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1 proceedings void. *In re Maxwell*, 146 Ariz. 27, 703 P.2d 574 (Ct. App. 1985). There are
2 no records with respect to any suit (other than here) pending before this Court, or
3 incorporated by reference for consideration, where evidence of conduct sustaining each
4 and every count is predicated, in part, upon unqualified breaches of Titles 36 and 14.
5 There does not exist, nor has it ever been the legislative intent to confine criminal
6 misconduct arising out of administration of probate proceedings to the Probate Court.
7 (*See* A.R.S. § 14-5429(A)(B)(C)(D) which allows for “concurrent jurisdiction” and
8 “other proceedings” in which the conservator as a fiduciary is individually liable in suit
9 and who may be sued directly in its individual capacity or its fiduciary capacity.)
10 Attorneys appointed for the protection of the ward and the unqualified protection of Mr.
11 Hall’s own resources cannot act in an adverse and conflicted fashion against Mr. Hall;
12 any such conduct by the fiduciary, authorized and ratified by its attorneys, is imputed to
13 the attorney, or attorneys under A.R.S. § 14-5652(B). A.R.S. § 14-5408(a)(1) provides
14 jurisdiction to probate jurists only that power to “preserve” and protect the ward’s assets
15 for his or her own benefit, or the benefit of that person’s dependents. The statute does
16 not allow jurisdiction, constitutionally, allowing the Probate Court to disregard attorney-
17 client relationships freely entered into by the “protected person.” A conservatorship
18 does not impair one’s right of contract given the fact that “incompetency” is no longer at
19 issue by virtue of the temporary guardianship or permanent guardianship dismissals
20 which are *res judicata* as to the “mental capacity” of the “protected person.” Further,
21 there is no conservatorship statute limiting, or purporting to limit a Plaintiff’s
22 constitutional right to counsel of his or her own choosing to pursue recovery. Those
23 being sued are absolutely conflicted out to prevent retention on the basis of self-interest
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1 from attempting to regulate, interfere, or undermine the attorney-client relationship
2 brought by the self-sustaining and independent adult individuals, of contracting age,
3 formerly under guardianship. Additionally, an attorney arguing for his own prospective
4 liability limitations (all have) attempting to act as constitutional “gatekeepers” while
5 engaging in acts of theft and criminal conduct renders void, or voidable, court orders
6 invading the attorney-client relationship which seeks to level the playing field as against
7 the offending fiduciaries and attorneys.

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9 88. A.R.S. § 14-5408(B) has absolutely no “effect” on the capacity of the
10 protected person in the conservatorship setting. Judgments, decrees, minute entries,
11 court orders, “appointments,” fraudulent and intentionally delayed “accounting” obtained
12 by officers of the court, by their very nature are frauds on the court, and have no issue or
13 claim preclusive effect which include the fact that under state law an official applying a
14 “rubber stamp” to the Probate proceedings are subject to set aside, at any time, without
15 qualification. *Estate of P.K.L.*, 189 Ariz. 487, 943 P.2d 847 (Ct. App. 1997). In the
16 present matter, A.R.S. § 14-5411 required sufficient bonding to protect the “protected
17 person” from his supposed protectors, the lawyers and fiduciaries, in the event of
18 negligent or other culpable conduct damaging the assets owned by the ward. In the *Hall*
19 matter, as in *Ravenscroft, Long and Mallet*, the bonding amounts were *de minimis* in
20 contrast to the unauthorized and undisclosed disbursements to the Defendants, and each
21 of them. A.R.S. § 14-1406 provides further evidence that Defendants, and each of them,
22 may only operate “to the extent there is no material conflict of interest ...” *Olivas v.*
23 *Olivas*, 132 Ariz. 61, 643 P.2d 1031 (Ct. App. 1982) (fraudulent conduct accruing in
24 1959 required judgment set aside of separate proceedings brought 20 years prior
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1 resulting in this 1982 opinion). *Cf. Ivancovich v. Meier*, 122 Ariz. 346, 348-49, 595 P.2d
2 24, 26-27 (1979) (party deprived of the opportunity to present his or her case in court on
3 the merits [this case in particular without disclosure of intentionally concealed and/or
4 spoliated documents] is considered a fraud on the court). Defendant Theut intentionally
5 failed to advise Mr. Hall of his constitutional due process right to petition the Court to
6 remove and expunge the guardianship or protective proceedings under A.R.S. § 14-5307
7 nor did Defendant Theut or his law firm advise Mr. Hall under A.R.S. § 14-5303
8 requiring a physician's report and comprehensive testing listing any functional
9 impairments together with a prognosis for the immediate future and opportunities for
10 improvement, on a short term basis, to truncate the proceedings.
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12 89. Ariz. R. Prob. P. 33 does not provide for an *ex post facto* "rubber stamp"
13 approving after the fact payment, advances and distributions diminishing Mr. Hall's
14 assets for attorney and fiduciary funding, without notice, without review, without
15 Department Accounting Review provided by Probate Administration, without advising
16 Mr. Hall that his assets had been, and continued to be, depleted, in secret. And, as
17 discussed above, lawyers engaged in the scope of representation directly, or in a direct
18 fiduciary relationship for the protection of assets (not for a "beneficiary") are absolutely
19 prohibited and barred from entering into agreements or exercising purported authority
20 under color of law that attempts to prospectively limit their liability. *See*, Ariz. R.
21 Supp. Ct. 42, ER1.8(a)(1); *Flagstaff Affordable Hous. Ltd. P'ship v. Design Alliance,*
22 *Inc.*, 223 P.3d 664; 2010 Ariz. LEXIS 11 (Feb. 12, 2010) (lawyers claiming limitations
23 for their own legal malfeasance were rejected in this Arizona Supreme Court opinion).
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ANTICIPATED DEFENSES

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90. There are no defenses under the Code of Professional Conduct (adopted or model) as evidence of intentional and material breaches of fiduciary duty and the attorney-client relationship where the defendant lawyers and fiduciaries agitate for the financial demise of the client or protected person to whom unqualified duties of fidelity, trust, and candor are owed. Theut is defenseless, and cannot provide a plausible common sense explanation as to why he and his counsel failed to provide the client files owed, unequivocally, to Mr. Hall, in breach of Arizona Supreme Court authority requiring disbarment for such conduct. Obstructive gamesmanship in this regard will not be tolerated by any Court, “discovery freeze” or not, as entitlement to the client files and the Public Records is absolute; not “discovery,” and not shielded under any theory of attorney-client privilege which must be abandoned even if asserted under the crime-fraud exception and/or principals of waiver which exist presently. Clearly, the U.S. Supreme Court cases of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007); *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009); and Arizona Supreme Court, *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 189 P.3d 344 (2008) credit all facts contained within the FAC as true for the purposes of deciding a Rule 12(b)(6) Motion. The operative facts must merely be plausible with the Defendants’ burden of proof to point out to the Court exactly which factual predicates are “implausible” based upon a rational and reasoned plausible counter-inference which would, in these cases, merely present a “tie” with the “tie going to the runner” (Plaintiff). Defendants, and each of them, simply quote, without reference to the First Amended Complaint, or underlying Complaint, or the incorporated First Amended

1 Complaints or Complaints what exactly was “conclusory” and not rationally related as a
2 non-conclusory fact, or what, if anything, was “speculative” to defeat, as a matter of
3 law, Plaintiffs’ allegations. There are none presented by the defense, and there will be
4 none other than general citation to certain catch-phrases adding nothing to, nor
5 detracting from the substance of Plaintiff’s Amended Complaint(s). Using words like
6 “preposterous,” “stunt,” and “sanctions” while concealing material and dispositive
7 evidence, concealing the client files, instructing public agencies to refrain from
8 answering Public Records Requests is not, typically, the type of evidence required of
9 the defense to “defeat”, on the basis of a motion to dismiss, Plaintiff’s well-pled
10 Amended Complaint(s). Ironically, as the Court reads Defendants’ Motions to Dismiss,
11 which will inevitably be filed (subject to sanctions, attorneys fees and costs),
12 Defendants do nothing more than that which is expressly disallowed by incantation of
13 “formulaic recitation” of the elements of a defensive claim ...”, substituting by proxy
14 jingoism for a plausible counter-inference explaining Defendants’ criminal conduct.
15 Just as complaints built on “mere conclusory statements” are insufficient under the
16 above trilogy, “mere conclusory defensive statements” are likewise subject to
17 repudiation by the Court as fundamentally deficient in support of a “motion to dismiss.”
18 The trial court here is not permitted to speculate about hypothetical facts that might
19 present a plausible counter-inference, when none are presented by the defense which
20 would entitle the defendant to relief.
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23 91. Defendants, and each of them, are expected to maintain frivolous
24 arguments relative to “judicial absolute immunity” as “Officers of the Court committing
25 a Fraud on the Court” with the fiduciaries and lawyers deriving “absolute immunity”
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1 for perjured testimony as Officers of the Court. Ironically, these types of meritless
2 arguments seeking to limit the liability of the perjuring lawyers charged with fiduciary
3 duties to Mr. Hall, and others similarly situated, in “prosecution” of the “protected
4 person,” vitiating well-established Constitutional Due Process Guarantees and Equal
5 Protection is more a testament to Defendants’ desperation than a coherent plausible
6 legal argument, lacking authority arising out of U.S. Supreme Court opinions, any
7 Circuit Court of Appeals, any District Court in the Country, or any Arizona State
8 Supreme Court, Court of Appeals, or trial court disposition of law favorable to
9 Defendants’ under facts substantially identical or similar to those at issue.
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11 **“IMMUNITY”**

12 92. Defendants, and each of them, relative to their ongoing scheme in
13 multiple cases against similarly situated plaintiffs cannot use their law license checking
14 out of the Code of Professional Conduct and the statutes referenced above converting
15 their law license into a license to steal. For example, Theut and his brothers, Theut,
16 Theut & Theut, have hit the trifecta relative to the Enterprise appearing in three out of
17 the four cases presented for review (*Hall, Ravenscroft, and Long*). Theut’s “court-
18 appointment” in this case under the direct attorney-client relationship operates under
19 both duties of undeviating and singular loyalty to Mr. Hall in the attorney-client
20 context, and as a fiduciary to Hall, and is specifically not “immunized” under Arizona
21 Supreme Court authority under probate statute or rule, or under any other rule or law,
22 from liability for intentional defalcations rising to the level of criminal racketeering
23 activity in the theft of client funds Theut was charged to protect. Theut, as with SFI,
24 cannot presumptively override constitutional statutes or The Constitutions themselves,
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1 which provide for due process of law in the protection of private property interests and
2 liberty interests at issue. Unauthorized billing practices in addition to being a series of
3 predicate acts under criminal wire fraud statutes, while enabling the extortionate
4 conduct of the fiduciary and liquidation of Mr. Hall's assets decades in the making,
5 [like Hall's prized gun collection], are not "judge-like" functions entitling lawyers like
6 Theut, and SFI to escape liability. The Arizona Supreme Court has made the issues at
7 bar a matter of statewide importance, and public policy dictates that any officer of the
8 court engaging in theft, extortion, bribery, or other schemes and/or artifices to defraud
9 punishable by imprisonment of one year or more under Arizona state law is, as
10 discussed below, RICO "racketeering activity" in a series of acts designed to obtain
11 Plaintiffs' private property interests. After-the-fact "rubber stamps" by the underlying
12 Probate Court does not "immunize" one for the original and unauthorized theft or
13 extortionate receipt of client funds nor has such conduct ever been construed to be a
14 "judicial function" and is, of course, clearly outside the scope of immunity, absolute or
15 qualified. *See, e.g., Zarcone v. Perry*, 572 F.2d 52 (2nd Cir. 1978). "Absolute
16 immunity" vaporizes in the face of individual capacity suits, as here, versus "official
17 capacity" suits against governmental agencies or governmental officials which is
18 obviously not the case here. *Kentucky v. Graham*, 473 U.S. 159 (1985). Theut and SFI
19 failed, and will fail in their burden of proof establishing a RICO or Due Process
20 exemption for personal liability by abrogation of public policy concerns, as recently
21 endorsed by our own Arizona Supreme Court issuing orders on the precise "billing
22 practices" for which Theut and SFI will, or may claim "immunity." Qualified
23 immunity went out the window long ago as well. *Forrester v. White*, 484 U.S. 219, 224
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1 (1988); *Cf. Dykes v. Hosemann*, 743 F.2d 1488, 1496-97 (11th Cir. 1984) (Judge acting
2 in clear and complete absence of personal jurisdiction loses judicial immunity); *Archie*
3 *v. Lanier*, 95 F.3d 438 (6th Cir. 1996) (criminal conduct does not constitute a “judicial
4 function” abrogating immunity in its entirety). Theut together with SFI conspired to
5 violate Mr. Hall’s clearly established Federal and State constitutional due process and
6 equal protection rights and, as a result, are absolutely liable for damages under § 1983.
7 *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Claims in breach of clearly established law
8 under the Due Process Clause and any violation or violations of that Clause (no matter
9 how unclear it may be that the particular action is a violation) violate a clearly
10 established right vitiating “immunity.” *Anderson v. Creighton*, 483 U.S. 635, 639-40
11 (1987).
12

13 **EVIDENCE OF BREACH OF A.R.S. § 40-46-456 (ARIZONA**
14 **VULNERABLE ADULT PROTECTION STATUTE)**

15 93. Although not strictly a Count under this FAC, Mr. Hall may use breach of
16 the statute and proof of the scheme and/or artifice to defraud in violation of fiduciary and
17 attorney-client duties owed Mr. Hall. First, A.R.S. § 46-456 requires that SFI and Theut
18 as a matter of law (*see Fickett, supra; In re Fogelman, supra*, Ariz. R. Sup. Ct. 42, E.R.
19 1.8(a)(1), *supra; Flagstaff Affordable Hous. Ltd. P’ship v. Design. Alliance Inc., supra*,
20 223 P.3d 664; 2010 Ariz. LEXIS 11 (Feb. 12, 2010); *National Sales & Service Co. v.*
21 *Superior Court, supra*) were in a position of “trust and confidence” to Mr. Hall. SFI,
22 Theut, as with SFI’s counsel, had express and unqualified fiduciary obligations to Mr.
23 Hall. The basis for the due process claims, claims under § 1983, together with the
24 Racketeering Counts, were the unilateral taking of Mr. Hall’s assets for the exclusive
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1 pecuniary gain of Defendants, and each of them, without “prior approval of the
2 transaction” by the Court or any other oversight administered by the State, except long
3 after the fact. A court, commissioner or other state, county or municipal public official,
4 or officer of the court cannot give retroactive application and approval of fraudulent
5 criminal conduct despite state court action under color of law to attempt ratification of
6 such conduct by issuance of “court order or decree”.

7
8 **42 U.S.C. § 1983**

9 94. Defendants, and each of them, apparently by instinct, massacre the
10 holdings of dispositive authority cited by Plaintiff in this FAC on § 1983. A few simple
11 facts are ignored by Defendants. First, the lawyers and fiduciaries are licensed by the
12 State of Arizona as “private parties” and the Defendants act as “private parties” and, if as
13 Defendants suggest, receiving an “appointment” converts one to a State Official under
14 color of State law, then, for the purposes of this argument Defendants are liable under 42
15 U.S.C. § 1983 irrespective of “appointment”, private party, or as the defense suggests, or
16 not. The nub of the issues under the § 1983 Count are private parties, acting under color
17 of State law (“appointment”) in concert with State Officials to deprive Mr. Hall and
18 others similarly situated of their constitutional due process protections and guarantees.
19 The private property deprivations without notice and an opportunity to be heard, without
20 an opportunity to cross-examine and confront those engaging in the concealed theft, is
21 the gravamen of the FAC. There is no contest by Defendants that fund transfers, asset
22 liquidations, as well as liquidation of retirement accounts, social security benefits, and
23 other valuable assets (gun collection) owned by Mr. Hall were liquidated without notice,
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1 without an opportunity to be heard months after the fact, and well before Mr. Hall was
2 kicked to the curb once Defendants had rendered him penniless. Defendants seeking to
3 blame the Probate Court Judiciary or Commissioners simply aggravate the situation by
4 conclusive admission of action under “color of State law” in deprivation of Mr. Hall’s
5 well established due process protections.

6 95. There is other, and have been other fundamentally meritless claims injected
7 into these collective proceedings by Defendants, and defense counsel, which are, by
8 definition, frivolous and deserving of sanctions, attorneys’ fees, and costs, the
9 “immunity” defense a laughable, but prime example.
10

11 **COMPETENCY DEFINED**

12 96. Mr. Hall, and those similarly situated such as Ms. Mallet and Mr.
13 Ravenscroft are able to care for their own personal safety and are fully capable of
14 providing for and attending to daily necessities of life such as food, clothing, shelter, and
15 their own medical care. This is the accepted definition of “competent” used in Arizona
16 and is, of course, the polar opposite of the definition of “incompetent” continually
17 conflated by the defense. *Kelly v. Elliston*, 188 Ariz. 514, 910 P.2d 665 (Ct. App. 1996);
18 *Kelly v. Ariz. Dept. of Econ. Sec.*, 213 Ariz. 17, 137 P.3d 973 (Ct. App. 2006) (chronic
19 “poly-substance abuse” negated the need for appointment of a guardian *ad litem* where,
20 in fact, there was no “mental illness” impairing the ability of Plaintiff to assist in her own
21 defense while communicating adequately with counsel rendering her, as a matter of law,
22 “mentally competent.”
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LONG/MALLET/RAVNSCROFT FIRST AMENDED COMPLAINTS
INCORPORATED BY THIS REFERENCE

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2 97. The associated-in-fact Enterprise, over the span of at least these four cases,
3 consists primarily of the same seven to eight entities or individuals. All appear in
4 multiple actions. Given the “open-ended” or “closed-ended” continuity of the offending
5 conduct lasting in excess of five years, predicate acts of similar conduct by the same
6 Defendants formulating a pattern of racketeering activity by the associated-in-fact
7 Enterprise, and given the similarity of each Plaintiff subjected to the Enterprise’s pattern
8 of racketeering activity allows Plaintiff Hall to establish a RICO pattern by resort to
9 incorporation by reference of the companion cases above. *Cf. Deppe v. Tripp*, 863 F.2d
10 1356, 1366 (7th Cir. 1988) (where one of the racketeering acts was not successful does
11 not mean that it is unavailable to establish a pattern); *Banks v. Wolt*, 918 F.2d 418 (3d
12 Cir. 1990) (same); *Blue Cross & Blue Shield of New Jersey, Inc. v. Philip Morris, Inc.*,
13 113 F. Supp. 2d 345, 368 (E.D.N.Y. 2000); *H.J. Inc. v. Northwestern Bell Telephone Co.*,
14 492 U.S. 229, 242 (1989)) (U.S. Supreme Court uses classic illustration: a hoodlum
15 extorts protection money from each of several shopkeepers and to state a “pattern” it is
16 necessary for any one Plaintiff shopkeeper to allege the Defendant’s extortionate conduct
17 of others. Plaintiff shall be able to plead these other predicate acts but need not have
18 sustained injury through the extortionate conduct of others. Unsuccessful predicate acts
19 are viable components of Plaintiffs’ well-pled “pattern”.)
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COUNT I
Intentional Spoliation

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2 98. This First Amended Complaint (FAC) reincorporates all prior
3 enumerated paragraphs construed in their entirety as a unified whole. This FAC
4 reincorporates by specific reference the *Ravenscroft, Mallet, and Long* First Amended
5 Complaints, to be filed in proximity herewith.

6
7 99. Defendants, and each of them, have failed to disclose dispositive and
8 material evidence in the form of electronic transmissions constituting Mr. Hall's files
9 paid for in full by Mr. Hall. Mr. Hall was entitled to the files because he had paid for,
10 and reasonably understood that the file contents, emails, and adverse conduct would be
11 immediately and timely disclosed to him under the reasonably foreseeable crime-fraud
12 exception which further waives the "attorney-client" shield in breach of fiduciary
13 duties owed. Defendants have deleted, scrubbed and spoliated the electronic
14 architecture of the underlying file contents which is the reason why Defendants refuse,
15 and continue to refuse production of email, electronic transmissions and dispositive
16 evidence which relates to, or which may relate to this file inculcating Defendants in a
17 conspiracy to defraud.

18
19 100. *Lips v. Scottsdale Healthcare Corp.*, 229 P.3d 1088, 2010 Ariz. LEXIS 19
20 (2010), recognizes third-party intentional spoliation. Defendants, and each of them,
21 have by specific intent, attempted to disrupt or injure the Plaintiffs' lawsuits by
22 intentionally withholding, concealing, and/or destroying material evidence under the
23 Defendants direct control or constructive control. A court-ordered discovery freeze has
24 no impact upon the duty of counsel to provide the Court and the litigants with material
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1 evidence. Defendants may not suppress nor encourage perjury or subornation of
2 perjury and obstruction of justice. Suppressing or concealing material evidence is
3 absolutely improper irrespective of what phase of the litigation is pending, with or
4 without a “discovery” request and with or without regard to a request for production of
5 documents, or otherwise.

6 101. The Defendants, and each of them, have instructed public entities, public
7 agencies, pursuant to Plaintiff’s Public Records Request and Plaintiff’s requests
8 pursuant to Arizona Supreme Court Rule 123 to intentionally avoid disclosure
9 irrespective of the fact that concurrent requests for such records are not “discovery” by
10 definition, as a matter of law. These acts and cover-up of the underlying actionable
11 conduct reflects the inter-dependent associated-in-fact enterprise developed by the
12 Defendant lawyers, fiduciaries, and each of them pursuing sham litigation defenses
13 with the reasonable and only inference for the blockade to prevent the absolute
14 destruction of the defense and defendants at the inception of the case.
15

16 102. Intentional concealment, suppression of material evidence or instructing
17 others to commit violations of state law with the effect being to deprive the Plaintiff of
18 material and dispositive evidence relating to this action, are acts which by design are
19 intended to disrupt and injure the Plaintiff’s suit.
20

21 103. Plaintiffs having fully plead Count I request an award of punitive
22 damages in amounts sufficient to deter other similarly situated lawyers and defense
23 counsel and defendant lawyers and fiduciaries engaging in acts detrimental to the
24 administration of justice. Plaintiff also respectfully requests this Court immediately
25 enjoin Defendants, and each of them from intentionally suppressing and/or concealing
26

1 material evidence bearing upon the dispositive issues raised in this FAC. Plaintiff
2 further requests an Order to Show Cause hearing on the issues relating to production
3 required under Plaintiff's Public Records Request and Rule 123 requests setting aside
4 defense instructions to the public agencies to refrain from answering and responding,
5 fully, to the requests. And, plaintiff requests the immediate disgorgement of his client
6 files by Defendant Theut.

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9 **COUNT II**
RICO

10 **(18 U.S.C.S. § 1961 *et seq.*; Violation of 18 U.S.C. § 1962 (a); Violation of**
11 **18 U.S.C. § 1962(b); Violation of 18 U.S.C. § 1962(c); Conspiracy to**
12 **Violate 18 U.S.C. § 1962(a) in Violation of 18 U.S.C. § 1962(d);**
13 **Conspiracy to Violate 18 U.S.C. § 1962(d) in Violation**
14 **of 18 U.S.C. § 1962(d); Conspiracy to Violate 18 U.S.C. § 1962(c)**
15 **In Violation of 18 U.S.C. § 1962(d); Violation of 18 U.S.C. § 1964(c))**

16 104. Plaintiff reincorporates all prior and subsequent enumerated paragraphs
17 into this count, the FAC to be read as a unified whole.

18 105. Defendants, and each of them, are charged with participation in the
19 conduct of the affairs of an "enterprise" through a "pattern of racketeering activity and
20 conspiracy" committing said offenses defined as "racketeering activities" under 18
21 U.S.C. § 1961(1) as "predicate acts" causing the Plaintiff injury to his business or
22 property (18 U.S.C. § 1964(c) and under 18 U.S.C. § 1962(a)(b)(c)(d)). An
23 "enterprise" is broadly construed under 18 U.S.C. § 1961(4), which "broadly non-
24 exhaustively encompasses any group of individuals associated-in-fact which includes,
25 but is not limited to, business-like entities."
26

ENTERPRISE

1
2 106. The enterprise of associated-in-fact individuals remains fairly constant
3 throughout the *Long, Ravenscroft, Mallet and Hall* cases. In fact, in prior pleadings
4 Defendants, and each of them, have moved to consolidate the proceedings, for all
5 purposes because of the substantial similarity in identity of the RICO Defendants in all
6 referenced cases (*i.e., Long, Ravenscroft, Mallet, and Hall*). “Enterprise” has been
7 broadly and non-exhaustively construed as any group of individuals’ associated-in-fact
8 which includes, but is not limited to, business-like entities. *Boyle v. U.S.*, 129 S.Ct.
9 2237, 2243 (2009) (“structure” does not require the associated-in-fact Enterprise to
10 maintain a “command post hierarchy” to qualify under the minimal standards
11 associated with the structure requirements comprising an enterprise.) The Enterprise,
12 for RICO purposes need not be motivated by an “economic purpose.” *National*
13 *Organization for Women, Inc. v. Scheidler*, 520 U.S. 249 (1994).
14

15 107. The conduct of the Enterprise qualifies under either an “open-ended”
16 continuity analysis or a “closed-end” continuity analysis: The predicate acts date to at
17 least 2005. Defendants have conceded that each predicate act under RICO in the
18 mailing, wire transfer, or use of the U.S. Mail is actionable as a predicate act which was
19 accomplished here, for all billings in execution of the scheme or artifice to defraud
20 Plaintiffs out of their valuable assets and property. *Bridge v. Phoenix Bond & Indem.*
21 *Co.*, 128 S.Ct. 2131 (2008) (Supreme Court notes first-party reliance is not required,
22 only that any third-party may rely upon Defendants actions, email or otherwise, causing
23 damage to the Plaintiff; the Court’s adoption of a “flexible” proximate cause analysis is
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1 all that is required and where the mail and wire fraud predicate acts were directly
2 related to the Plaintiff's injury is all that is required to sustain the RICO analysis).

3 108. The purpose of Defendants' RICO Enterprise was simply the improper
4 acquisition of money from those under their care as attorney-client or fiduciaries, and to
5 pick the pockets of the "protect person." The RICO Defendants were not to engage in
6 self-dealing lining their own pockets to the Plaintiffs' ultimate financial demise.

7 **PREDICATE ACT STANDING**

8 109. The Plaintiffs, and each of them, specifically Mr. Hall, may stack the
9 predicate acts arising out of similar cases involving the Enterprise which conduct has
10 been incorporated by reference in the companion cases of *Mallet, Ravenscroft and*
11 *Long*. Use of predicate acts involving the same Enterprise associated-in-fact
12 individuals or entities are viable components of Plaintiff's well-pled "pattern" of
13 unlawful RICO conduct. *Cf. H.J., Inc. v. Northwestern Bell Telephone*, 492 U.S. 229,
14 242 (1989); *Bridge v. Phoenix Bond & Indem. Co.*, *supra*; *Accord, Depp v. Tripp*, 863
15 F.2d 1356, 1366 (7th Cir. 1988) (although one of the racketeering acts was not
16 successful does not mean that it is unavailable to establish a pattern); *See also, Banks v.*
17 *Wolk*, 918 F.2d 418 (3rd Cir. 1990).

18 **CONTINUITY**

19 110. The Ninth Circuit has declined to impose a bright-line one-year test for
20 "closed-end continuity." *Allwaste, Inc. v. Hinson*, 65 F.3d 1523 (9th Cir. 1995). The
21 present cases demonstrate the acts were not isolated, sporadic, or short-term and
22 conduct, as here, designed to conceal or prevent discovery of prior misconduct projects
23 the threat of an "open-ended scheme" which imposes liability irrespective of brevity.
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1 *Cf. United States v. Indelicato*, 865 F.2d 1370 (2nd Cir. 1989); *Olive Can Co., Inc. v.*
2 *Martin*, 906 F.2d 1147 (7th Cir. 1990).

3 111. “Open-ended continuity” prevails in the instant actions, given the fact
4 that the Enterprise acts in a way which reflects upon its regular way of doing business,
5 which is to strip the “protected” persons to whom they owe fiduciary responsibilities,
6 of their assets, collectively in these cases exceeding \$3,500,000. *H.J., Inc., supra* at
7 492 U.S. 239, 242 (1989). *See also, Tabas v. Tabas*, 47 F.3d 1280 (3rd Cir. 1995
8 (conduct post-dating Complaint filing evidence of “open-ended continuity” and is
9 evidence of the Enterprises open-ended threat of continuing this conduct as
10 Defendant’s regular way of doing business). Cover-ups also qualify as open-ended and
11 furnish further evidence where the Defendants attempt to suppress dispositive material
12 testimony and evidence involving obstruction of justice and are thus considered part of
13 a “pattern of racketeering activity” for RICO purposes. *U.S. v. Teitler*, 802 F.2d 606
14 (2nd Cir. 1986).

15
16 112. As Plaintiff’s plead, the scheme and pattern of racketeering activity
17 engaged in by the Enterprise was to receive, in effect, bribes and kickbacks from one
18 another denying Plaintiff fiduciary entitlements to the rendition of honest services
19 under § 1346 as a defined predicate act under § 1961(1)(b). *Cf., Skilling v. United*
20 *States*, 2010 U.S. LEXIS 5259 (June 24, 2010); *Weyhrauch v. United States*, 2010 U.S.
21 LEXIS 5254 (June 24, 2010).

22
23 113. It is also a predicate act to exercise the wrongful use of an otherwise valid
24 power (i.e., judicial appointment) that converts permissible action into extortion. *U.S.*
25 *v. Hyde*, 448 F.2d 815 (5th Cir. 1971). Racketeering activity defined exhaustively under
26

1 § 1961(1) includes bribery and extortion punishable under state law by imprisonment
2 for more than one year which, in the instant case, exists as a class 1, 2, or 4 felony with
3 respective periods of incarceration presumptively set at 5-10 years, 3.5-7 years, and
4 2.5-3 years respectively. A.R.S. § 13-1804(7); § 1951(b)(2).

5 114. Executing on a scheme or artifice to defraud while engaging in the
6 material suppression of evidence obstructing the administration of justice is, in addition
7 to a RICO predicate act, unconditionally prohibited by a legitimate duty requiring
8 lawful conduct by officers of the court to be compatible with the very nature of a trial
9 as a search for truth. *Nix v. Whiteside*, 475 U.S. 157, 106 S.Ct. 988 (1986). Use of
10 perjured or false evidence, or the material concealment thereof, where the lawyers
11 know or reasonably should know the conduct is illegal or fraudulent is a fraud on the
12 court and actionable. *Nix v. Whiteside, supra*. Perjury, or subornation of perjury
13 through affidavit is, according to the *Nix* Court, as much a crime as tampering with
14 witnesses (also a racketeering predicate offense), undermining the administration of
15 justice. *Nix v. Whiteside, supra*.

16
17
18 115. The Defendants also conflate evidence of theft, extortion, and bribery as a
19 roundabout way to obtain fee disgorgement under prior proceedings isolated to the
20 Probate Court proceedings. Wrong. It is that evidence of theft, extortion, bribes and
21 kickbacks as “predicate acts in a pattern” of racketeering activity as an enterprise,
22 which is proof of the associated-in-fact Enterprise’s conduct. It is the direct damages
23 sustained to the Plaintiff’s property which is at issue, and the manner and method
24 Defendants executed on their scheme to liquidate the Plaintiff’s assets unto themselves.
25 A “fee contest” has little or nothing to do with this case and of course reflects upon
26

1 whether the issues presented in this matter were fully and fairly litigated in any
2 underlying proceeding in any forum, at any time which, of course, there were not.

3 116. The multiplicity of ongoing predicate acts includes false attestations to
4 Federal financial institutions for the purpose of unlawfully obtaining Plaintiff's
5 property or assets. The fact that a bank, or the courts for that matter, or other State or
6 Federal agencies, relied upon Defendants' emails, wires, electronic transmissions, or
7 other documents is all that is required. Fiduciary Fraud under A.R.S. § 13-2201(2)(3)
8 and A.R.S. § 13-2202(A)(2) are minimally Class 6 felonies with a presumptive period
9 of incarceration of 1-1.5 years.
10

11 117. The Syndicate bribes are predicate acts under 18 U.S.C. § 201 under §
12 1961(1)(b) which include, but are not limited to: § 1341 (relating to mail fraud); §
13 1343 (relating to wire fraud); § 1344 (relating to financial institution fraud); § 1503
14 (relating to obstruction of justice); § 1510 (relating to obstruction of a criminal
15 investigation); §1513 (relating to retaliation against the "protected person"); § 1952
16 (relating to racketeering); and § 1957 (engaging in monetary transactions in property
17 derived from specified unlawful activity).
18

19 CONSPIRACY AS A PREDICATE ACT

20 118. Under §1961(1)(D), conspiracy is a viable predicate act. *U.S. v. Licavoli*,
21 725 F.2d 1040 (6th Cir. 1983); *U.S. v. Warneke*, 310 F.3d 542 (7th Cir. 2002). In the
22 present case, and in the companion cases, the Defendants' unanimous participation as
23 reflected in the email chain (*Ravenscroft*) necessarily reflects the mental intent required
24 for a conspiracy claim under §1962(d) (*see, generally, Shearin v. E.F. Hutton Group*,
25 *Inc.*), 885 F.2d 1162 (3rd Cir. 1989). The First Amended Complaint has stated that the
26

1 agreements entered into by the Defendants, and each of them, were for the commission
2 of at least two predicate acts by those associated with the Enterprise here. *See, Salinas*
3 *v. United States*, 522 U.S. 52 (1997) (a conspiracy may exist even if a conspirator does
4 not agree to commit or facilitate each and every part of the substantive offense; the
5 conspirator must intend to further the endeavor which, if completed, would satisfy the
6 elements of a substantive criminal offense); *Id.* at 522 U.S. 65). Put another way, had
7 the Defendants, in their fiduciary capacities, actually performed as required by law
8 would necessarily exclude independent self interested behavior as an explanation for
9 their conduct. The Defendants, and each of them, certainly had a strong, common
10 motive to conspire because without the economic collaboration between the fiduciaries
11 and lawyers, their economic interests in the estate would have deteriorated immediately
12 absent the enterprise's monetary objectives in controlling the finances and assets.
13 There is no other plausible explanation for the manner and method in which the
14 lawyers and fiduciaries breached their duties to the "protected person" requiring
15 secreted email and collaborative efforts unnecessarily protracting the guardianship
16 and/or conservatorship proceedings.
17
18

19 **SCIENTER**

20 119. Rule 9(b) provides that "malice, intent, knowledge, and other condition
21 of mind may be averred generally" but, nonetheless, the Plaintiffs have provided
22 hundreds of email, transcripts, deposition testimony, all reflecting upon defendants'
23 collective intent which minimally give rise to a "strong inference" of fraudulent intent
24 by engaging in conduct diametrically opposed to regulation, rule, and statute designed
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1 to achieve the polar opposite of that conduct engaged in by Defendants. *O'Brien v.*
2 *National Property Analysts Partners*, 936 F.2d 674 (2nd Cir. 1991).

3 **RULE 9(b)**

4 120. In addition to the specific dates, times and parties relative to the
5 testimony and email provided, and in addition to specific dates, times, and Defendants
6 perpetrating any given act of fraud, the Court is requested to take judicial notice of the
7 underlying probate files, including the entire file contents, including email, electronic
8 transmissions, electronic reception, work product, firm deposits, the dates, and/or the
9 omissions, to act in accordance with prescribed law. *See, Moore v. Kayport Package*
10 *Express, Inc.*, 885 F.2d 531 (9th Cir. 1989).
11

12 WHEREFORE, Plaintiff having fully pled this claim against Defendants under
13 Count II, respectfully requests that this Court enter judgment in favor of Plaintiff and
14 against all Defendants, individually, jointly and severally, and against their respective
15 marital communities, if any, as follows:

16 A. Awarding Plaintiff allowable statutory damages (trebled) resulting
17 from Defendants' violations of the above-referenced RICO statutes;

18 B. Awarding Plaintiff statutory entitlement to reasonable attorney's
19 fees, together with a loadstar factor, costs and expenses associated with
20 prosecution;
21

22 C. Such other and further relief as the Court deems just and proper
23 under the circumstances.
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COUNT III
Private Party Civil Rights Violations
42 U.S.C. §1983 (all Defendants)

120. Plaintiff reincorporates all prior and subsequent paragraphs into this Count to be read as a unified whole.

121. Professional licensees, such as Defendants, are liable for violations of 42 USCS § 1983. (*See generally Kimes v. Stone*, 84 F.3d 1121 (9th Cir. 1996) (finding that the Supremacy Clause “prohibited application of state’s litigation privilege bar to 42 USCS § 1983 action against attorneys”).

122. Private actor liability requires one of the following: “(1) public function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental nexus.” *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826 (9th Cir. 1999); *Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002).⁴

123. Satisfaction of any one of the foregoing tests is sufficient to find state action. *Lee, supra*, at 276 F.3d at 554.

⁴ In *Lugar v. Edmondson*, 457 U.S. 922 at 924, 102 S.Ct. 2744, 73 L. Ed. 2d 482, the Court held that the private Defendants who had initiated the attachment process could be liable as state actors for “participating in the deprivation”: “Invoking the aid of state officials to take advantage of state-created attachment procedures” made the private Defendants “willful participants in joint activity with the State or its agents.” *Id. at 942*. See *Lugar*, 457 U.S. at 941 (“We have consistently held that private party joint participation with state officials in the seizure of private property is sufficient to characterize the party as a ‘state actor.’”); see also *Dennis v. Sparks*, 449 U.S. 24, 27-28, 66 L.Ed. 2d 185, 101 S. Ct. 183 (1980) (“Private persons, jointly engaged with state officials in the challenged action are action... ‘under color’ of law for purposes of §1983 actions.”); *States v. Price*, 383 U.S. 787, 794, 16.L Ed. 2d 267, 86 S. Ct. 1152 (“private persons, jointly engaged with state officials in the prohibited action, are acting “under color” of law for purposes of this statute to act “under color” of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents.”); *Fonda v. Gray*, 707 F.2d 435,437 (9th Cir. 1983) (“A private party may be considered to have acted under color of state law when it engages in a conspiracy or acts in concert with state agents to deprive one’s constitutional rights.”)

1 124. Once Defendants and the Enterprise, through the attorneys and other
2 licensees as officers of the court, fiduciaries and/or court-appointed actors who
3 participated in the Enterprise, sought to act without legal authority, or in excess of
4 authority granted to them through the Courts, the acts of these individuals crossed the
5 line from private enterprise to outright fraud and private party liability in the
6 procurement of judicial orders in contempt of 42 U.S.C. § 1983.

7 125. A professional license together with a court appointment is not a vehicle
8 for immunizing the license holder or appointee from its prohibited use.

9 126. Defendants have acted with the intent to hinder, obstruct and/or evade
10 culpability for their prohibited joint conduct under color of state law.

11 127. Defendants have misused the state courts by generally simulating process
12 to mask their own misconduct and were all willful participants in joint activity with the
13 State or its agents.

14 128. The Plaintiff has been damaged by reason of Defendants' violations of §
15 42 U.S.C. § 1983, in amounts to be determined at trial.

16
17
18 WHEREFORE, Plaintiff, having fully pled this claim against Defendants under
19 Count III, respectfully request that this Court enter Judgment in favor of Plaintiff and
20 against all Defendants, individually, jointly and severally and against their respective
21 marital communities, if any, as follows:

22 A. Awarding Plaintiff all allowable statutory damages resulting from
23 Defendants' violations of Mr. Hall's constitutional rights;
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1 B. Awarding punitive or exemplary damages in an amount sufficient
2 to deter these Defendants or others similarly situated from violating the civil
3 rights of vulnerable adults; and

4 C. Such other or further relief as the Court deems just and proper
5 under the circumstances.

6 **COUNT IV**
7 **Violations of Federal/State Constitutional Due Process**
8 **Guarantees and Equal Protection**

9 129. Plaintiff incorporates each and every allegation contained in the above
10 paragraphs of this First Amended Complaint as though fully set forth herein.

11 130. Private property interests, without hearing, without notice, in secret were
12 liquidated to the Defendants and each of them (and their employer law firms) in
13 violation of well established law and accepted practices under the 14th Amendment Due
14 Process Clause. *Mullane v. Central Hanover Bank & Trust Co.*, 399 U.S. 306 (1950).
15 The fact that the state approves the absence of pre- or post-deprivation hearings, post-
16 liquidation of assets purportedly protected by the fiduciaries and lawyers assigned to
17 and for the benefit of the “protected person” does not, and cannot, constitutionally
18 authorize the deprivation of property interests without appropriate procedural
19 safeguards, of which there were absolutely none in the present matter. *Logan v.*
20 *Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148 (1982). The *Logan* Court also
21 addressed certain Equal Protection arguments endorsed by Justice O’Connor in her
22 concurrence relative to the Due Process Clause, which is applicable in the instant case.
23

24 131. Due process requires that courts make certain that proper professional
25 judgment was “in fact” exercised in the denial of a liberty interest and that due process
26

1 is assured that property will not be taken through government authority absent notice
2 and an opportunity to be heard. *Morrison v. Shanwick Int'l Corp.*, 167 Ariz. 39, 42, 804
3 P.2d 768 (Ct.App. 1990).

4 WHEREFORE, Plaintiff having fully pled this claim against Defendants under
5 Count IV, respectfully requests that this Court enter judgment in favor of Plaintiff and
6 against all Defendants, individually, jointly and severally, and against their respective
7 marital communities, if any, as follows:

8 A. For an order granting Plaintiff relief setting aside all orders,
9 minute entries, and judgments arising out of the underlying probate proceedings;

10 B. For an award of costs and attorney's fees pursuant to 42 U.S.C.
11 §1988 and damages, to be proven at trial relating to said constitutional
12 deprivations;

13 C. To the extent required injunctive relief.
14

15 **COUNT V**
16 **Rule 60 Independent Action/Savings Clause**
17 **and Rule 60(c)(4)/60 (b)(4)**
18 **(all Defendants)**

19 132. Rule 60 provides an independent action clause to relieve a party from a
20 judgment, order, or proceeding, or to set aside a judgment for fraud on the court,
21 typically by officers of the court as occurred in the present case. Likewise, the
22 judgments entered in excess of jurisdictional authority, or without jurisdiction at all, or
23 in violation of the law, are void.

24 133. Where the fiduciaries and lawyers assigned for the protection of the
25 "ward" or "protected person" agitate for his (her) defeat, the fraudulent
26

1 misrepresentations, conflicts of interest, and duties to the tribunal are impaired to such
2 an extent that, as here, Mr. Hall had absolutely no chance of vindicating his property or
3 liberty interests. This concerted action by and between the fiduciaries and “appointed”
4 lawyers engaged in “extrinsic fraud” in securing funds for themselves at the expense of
5 the client. *In the Matter of the Estate of Thurston*, 199 Ariz. 215, 16 P.3d 776 (Ct.App.
6 2000). As such there is a heightened duty where a fiduciary relationship exists, as here,
7 between the lawyers, the fiduciaries, and the lawyers acting in a fiduciary capacity to
8 deal fairly, and not fraudulently, and to disclose the true facts. Where, as here, the
9 Defendants, and each of them, refused to reveal the truth while denying Mr. Hall any
10 opportunity at hearing or otherwise for adequate representation, and where the
11 fiduciary (or lawyer) personally profits by his fraudulent conduct, the justification in a
12 collateral proceeding to set aside the judgment is appropriate. *Id.* There is no dispute in
13 the present matter that the accounting records were not made fully available for
14 examination in a timely manner, nor were documents shared advising as to the
15 hemorrhaging of the estate to and for the benefit of assigned attorneys and fiduciaries.
16
17 The preceding evidence is overwhelming that the attorneys in collusion with the
18 fiduciaries prevented Plaintiff from knowing the status of the probate proceedings, and
19 that he was denied access to any documents or information concerning the financial
20 status of the estate and was prevented from asserting any claims regarding estate assets.
21
22 *In re Thurston, supra.* Such self-serving and deceptive conduct is actionable.

23
24 134. The Court, under Rule 60, has inherent power to relieve a party from a
25 judgment, order, or a proceeding for fraud on the court by officers of the court. Where
26 the fraud rises to the level of an unconscionable plan or scheme designed to improperly

1 influence the court, courts can and “should” act. *Dixon v. Comm’r of Internal Revenue*
2 *Service*, 316 F.3d 1041, 1046 (9th Cir. 2003). *Cf. Levander v. Prober*, 180 F.3d 1114,
3 1119 (9th Cir. 1999) (recognizing the power of the court to amend a judgment or order
4 under its inherent power for extinguishment of the judgment or order obtained by fraud
5 on the court); *Cf. Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128 (1132-1133)
6 (9th Cir. 1995).

7 WHEREFORE, Plaintiff having fully pled the claims against Defendants under
8 Count V, respectfully request that this Court enter judgment in favor of Plaintiff setting
9 aside all tainted underlying judgments, orders, and minute entries obtained in the
10 underlying proceedings.
11

12 **COUNT VI**
13 **Breach of Fiduciary Duty**

14 135. Plaintiff reincorporates each and every allegation contained in the
15 foregoing paragraphs as though fully set forth herein.

16 136. Relative to the fiduciaries and attorneys *In re Estate of Shano*, 177 Ariz.
17 550, 869 P.2d 1203 (Ct. App. 1993) and *In re Estate of Fogelman*, 197 Ariz. 252, 3
18 P.3d 1172 (Ct. App. 2000) define the fiduciary duties and obligations owed by
19 Defendants to the Plaintiff.
20

21 137. The duty owed to Plaintiff by Defendant attorneys Theut, TT&T and SFI
22 and DoVico is defined under Arizona law. *See, Paradigm Ins. Co. v. Langerman Law*
23 *Offices, P.A.*, 200 Ariz. 146, 24 P.3d 593, 201 (2001); *See also, Associated Aviation*
24 *Underwriters v. Wood*, 209 Ariz. 137, 98 P.3d 572 (App. 2004).
25
26

138. Evidence that Plaintiff Hall was invited to rely on Defendant Attorneys' legal services and representations subjects Defendant Attorneys and law firms to liability. *See, generally, Kremser v. Quarles & Brady, L.L.P.*, 201 Ariz. 413, 418, 36 P.3d 761 (Ct. App. 2001); *Cf. Chalpin v. Snyder*, 220 Ariz. 413, 207 P.3d 666 (Ct. App. 2008).

139. Defendants, and each of them, intentionally breached their professional and fiduciary duties.

WHEREFORE, Plaintiff, having fully pled the claims against Defendants under Count VI, respectfully requests that this Court enter judgment in favor of Plaintiff and against these Defendants, individually, jointly and severally and against their respective marital communities, if any, as follows:

A. Awarding Plaintiff all allowable actual damages resulting from Defendants' breaches of their fiduciary and/or professional duties;

B. Awarding punitive or exemplary damages in an amount sufficient to deter these Defendants or others similarly situated from engaging in the conduct alleged in Count VI; and

C. Such other or further relief as the Court deems just and proper under the circumstances, including attorney's fees and costs.

JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

RESPECTFULLY submitted this 28th day of July, 2010.

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GOODMAN P.A.

By: /s/ GHG

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Attorneys for Plaintiff Ronald T. Hall

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 28th day of July, 2010, I electronically transmitted the
3 above document to the Clerk's Office of the Maricopa County Superior Court using the
4 CM/ECF system for filing, with a copy served via First Class U.S. Mail, postage pre-
paid and/or electronically transmitted or hand delivered as designated below to:

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/s/Grant G. Goodman

1 **VERIFICATION**

2 **STATE OF ARIZONA**)
3)
4 **County of Maricopa**)

5 GOODMAN P.A. in the above-entitled action affirms that the contents of the
6 attached First Amended Complaint are true, correct and faithful to the evidentiary record.
7 This verification is knowingly submitted under penalty of perjury. The factual averments
8 of this First Amended Complaint are from official and public records. Documents of
9 record have been incorporated by reference into this First Amended Complaint as
10 substantive proof of the facts and allegations contained herein. Submittal of this First
11 Amended Complaint to the U.S. Attorney’s Office, and the Arizona Attorney General’s
12 Office is required by law.

14 DATED this 28th day of July, 2010.

16 **GOODMAN P.A.**

17 By /s/ Grant H. Goodman
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